In the High Court of Uttaranchal, at

Nainital.

F.A. No. 806/2001
(Old No. 661 of 1992)

1- State of U.P. through Collector
Dehradun
2- U.P. Awas Evam Vikas Parishad Lucknow,
104, M.G. Marg, Lucknow .... Appellants.

Vs.

1- Baij Nath,
2- Kedar Nath
3- Ram Nath
All S/o Raghubir Prasad
R/o 186, Dharampur,
Dehradun ...Respondents

Sri K.S. Mehta, learned counsel for the appellants.
Sri Rajendra Dobhal, learned counsel for the respondents.

Hon'ble B.C. Kandpal, J.

This First appeal, U/S 54 of the Land Acquisition Act, has been filed by the State of U.P. as well as the U.P. Awas Evam Vikas Parishad, Lucknow against the judgment and decree dated 22-10-1986, passed by Additional District Judge, Dehradun, awarding solatium @ 30% on the amount of compensation assessed and directed to pay @ 15% per annum on the amount of compensation and interest @ 15% per annum on the amount of compensation in Regular Misc. Case No. 32 of 1985 arising out of Land Acquisition Case No. 70 of 1980.

2- Brief facts of the case are that land of the petitioners/respondents of village Dharampur was acquired by the Collector, Dehradun on the proposal of

Improvement Trust, which was subsequently merged in Awas Evam Vikas Parishad, U.P. A notification U/S 4(1) of the Land Acquisition Act (for short ' the Act') was issued on 9-4-1964 and notification U/S 6 of the Act was issued on 3.3.1966. The possession of the acquired land, measuring 47.41 acres, was taken on 25-6-1975. Thereafter, the owners of the land filed their objections. Under some peculiar circumstances which need not be explained here, the possession of the land was directed to be taken before the award to be made by the Land Acquisition Officer. On having scrutinized the objections of the land owners, the Special Land Acquisition Officer framed two belts- one of the lands which were closer to Haridwar Road and the other situated on the said road. The land of the first belt was assessed @ Rs. 11,391-41 per acre, while that of the remotely situated belt at a reduced rate of Rs. 7,594-84 and compensation was granted accordingly.

3- Being aggrieved by the award made by the Special Land acquisition Officer, the owners of the land filed the references U/S 18 of the Act which were accepted by the Reference Court and awarded compensation at an enhanced rate of Rs. 20863/- per acre in respect of the entire area of land. Besides compensation, solatium @ 15% and interest @ 6% per annum were also awarded.

4- Thereafter, the land owners including the respondents, in this appeal, preferred Regular Misc. Cases before the Reference Court. The Reference Court allowed the Regular Misc. Cases and enhanced the rate of solatium from 15% to 30% in view of the amended Section 23(2) of the Act and also enhanced

the rate of interest from 6% to 15% per annum under the amended provisions of Section 28 of the Act, vide judgment and order dated 22-10-1986.

5- Feeling aggrieved by the aforesaid impugned judgment and order passed in the Reference Court U/S 18 of the Act, the State of U.P. as well as the U.P. Awas Evam Vikas Parishad, Lucknow preferred the appeal before the Hon'ble Allhabad High Court, which has been transferred to this court after creation of the separate state.

6- Heard Sri K.S. Mehta, learned counsel for the appellants and Sri Rajendra Dobhal, learned counsel for the respondents and perused the record.

7- Learned counsel for the appellants has firstly argued that the U.P. Awas Evam Vikas Parishad, Lucknow was not a party either before the Special Land Acquisition Officer or before the Reference Court and the impugned order by which the solatium as well as the interest have been enhanced, has been passed without affording an opportunity to the appellants.

8- Learned counsel for the appellants in support of his contention has cited a decision of the Hon'ble Apex Court in the case of **U.P. Awas Evam Vikas Parishad Vs. Gyan Devi** reported in **AIR 1995 Supreme Court, 724** and has submitted that in view of the aforesaid decision passed by the Hon'ble Apex Court, in proceedings taken under the Land Acquisition Act, as amended by the state Law or if specifically provided in the State enactment under which the land is being acquired providing for issuance of notice or giving an opportunity of hearing is require to be followed and if

such notice is not issued of hearing is not afforded then the proceedings are liable to be set aside.

9- I have carefully gone through the judgment cited before me and perused the record in order to assess the arguments advanced by the learned counsel for the appellants.

10- The record reveals that U.P. Awas Evam Vikas Parishad had engaged a counsel before the Reference Court who filed his Vakalatnama on 8-2-1983, which is available as paper No. 12-C-2/1 on the record. Apart of the aforesaid circumstance, it is also evident from the record that the employees from U.P. Awas Evam Vikas Parishad, Lucknow were summoned by the court as witnesses in the case and their depositions were recorded. The fact that the employees of the Parishad were summoned by the court and their depositions were recorded, is admitted by the appellant itself, which is evidence from the perusal of the rejoinder affidavit dated 2-7-1988, filed by the appellants in this appeal.

11- In view of the aforesaid circumstance, the judgment cited before me by he learned counsel for the appellants does not render any help to the appellants. It is quite clear that the U.P. Awas Evam Vikas Parishad (appellant) had full knowledge of the proceedings before the court below.

12- The learned counsel for the appellants has further submitted that he enhancement of the solatium as well as the interest made by the Reference Court is against the provisions of Section 23(2) and section 23 (1-A) of the Land Acquisition Act, as amended by Act

No. 68 of 1984. It has been submitted that the provisions of the amended Act were not applicable to the acquisition of the land of the U.P. Awas Evam Vikas Parishad when the proceedings were pending before the court below.

13- I again fail to appreciate the documents advanced by the learned counsel for the appellants in this regard.

14- The provisions of Section 23(2) and Section 28 of the Land Acquisition Act were amended by the Amending Act No. 68 of 1984 and in view of this amendment the rate of interest was enhanced from 6% to 9% on the excess amount awarded by the court U/S 18 of the Act, if the payment was made within one year from the date of award and if the payment was not made within one year of the passing of the decree by the court, the rate of interest was leviable as15% per annum in view of the amended Section 28 of the Act. Likewise the solatium U/S 23(2) of the Act was escalated 30% from 15%.

15- The judgments and awards in Land Acquisition Cases were pronounced by the Reference Court on 27-9-1984. Thereafter, in view of the amendment in Section 23(2) and Section 28 of the Act, the petition for review was filed and the Reference Court accordingly modified the award in view of the provisions of the Amending Act. The amended provisions of Section 23(2) and Section 28 of the Land Acquisition Act have been made applicable not only with retrospective effect, i.e. 30th day of April, 1982, but also to all awards made after 24-9-1984. The Reference Court has based its impugned judgment and award on the ruling of the

Hon'ble Apex Court n the case of **Bhag Singh Vs. Union Territory of Chandigarh,** reported in **A.I.R. 1985 Supreme Court, page 1576,** wherein the Hon'ble Apex Court has held that the amended provisions of Section 23(2) and Section 28 of the Act, are applicable to all proceedings relating to compensation pending on the date of the commencement of the Amending Act and filed subsequent that date, whether before the Collector or before the Court, High Court or Supreme Court. The relevant observation of the Hon'ble Apex Court is quoted as below:-

> "The amended provisions of Section 23 (2) and Section 28 would apply in determination of the amount of compensation where proceedings are either pending or are filed subsequent to the date, whether before the Collector or before the court or before the High Court or the Supreme Court.
>
> Under S. 30 sub-section (2) of the Amending Act the provisions of the amended Section 23 Sub-section (2) and Section 28 are made applicable to all proceedings relating to compensation pending on 30th April, 1982 or filed subsequent to the date, whether before the Collector or before the Court or the High Court or the Supreme Court, even if they have finally terminated before the enactment of the Amending Act. It would not be a correct interpretation of Section 30 Sub-Section (2) to say that the provisions of the amended Section 23 Sub-section (2) and Section 28 would be applicable in relation to an order passed by the High Court or Supreme Court only if the order is passed in appeal against an award made by the Collector or Court between 30th April, 1982 or is filed subsequent to the date the provisions for the amended Section 23 Sub-section (2) and Section 28 would be applicable in

relation to an order in such appeal by the High Court or the Supreme Court."

16- In view of the principle of law laid-down by the Hon'ble Apex Court, there remains no doubt about the applicability of the Amending Act to the cases in hand and the Hon'ble Apex Court has held that the Amending Act No. 68 of 1984 has been made applicable with retrospective effect and essentially the consequential effect bound to follow is that the award on the point of solatium and interest has thus rightly been enhanced.

17. On the basis of the aforesaid discussion, I come to the conclusion that there is no illegality or infirmity in the impugned judgment and order dated 22-10-1986 passed by the Reference Court.

18- I do not find any merit in this appeal and the same is accordingly dismissed. No order as to costs. .

(B.C. Kandpal, J)

Dated: 05-9-2006
ISB